



WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance
Over the Fort Apache Indian Reservation*

Resolution No. 01-2014-09

(Directing Attorney General Palmer to Hire an Independent Prosecutor to Investigate and if appropriate, indict and prosecute, Councilman Clinton Kessay Jr.)

WHEREAS, pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe ("Tribe"), *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters concerning the welfare of the Tribe. Article IV, Section 1(s) empowers the Council regulate itself; and

WHEREAS, on December 4, 2013, the Tribal Council, during a regularly scheduled general meeting, passed Resolution No. 12-2013-232 ("Resolution"). The Resolution authorized the Tribe to enter into an agreement with Smith Bagley, Inc. d/b/a Cellular One for placement of a telecommunications tower in Cedar Creek; and

WHEREAS, in passing the Resolution, the Tribal Council relied on information presented by Councilman Clinton Kessay Jr. during the December 4th Council meeting. Councilman Kessay stated to the Tribal Council that because of the Attorney General's inability to secure a deal with Cellular One in years past, in addition to his "bias" against Cellular One and desire for "credit", that he had no choice but to turn to former Tribal Attorney George Hesse for legal review; and

WHEREAS, according to the Attorney General, he reviewed the terms of the agreement and made an informal inquiry with attorney George Hesse regarding the terms negotiated. This inquiry revealed that Councilman Kessay misrepresented material facts to the Council in securing a deal with Cellular One. George Hesse informed the Attorney General that he was never consulted, nor did he help negotiate or review the Cedar Creek Tower agreement as stated in no uncertain terms by Councilman Kessay, Jr., on December 4th; and

WHEREAS, after further review, the Attorney General learned that the agreement was not solely an agreement for the placement of a tower in Cedar Creek, but instead a master lease agreement with serious legal implications and consequences for the greater Tribe; and

WHEREAS, the Attorney General attempted to notify the Chairman's office of the misrepresentation in hopes of preventing the Chairman from signing the questionable lease agreement, but was unable to do so in time; and

WHEREAS, the Attorney General then informed the Council and Cellular One regarding the misrepresentations to Council that: 1) Attorney George Hesse reviewed the agreement(s) as previously stated by Councilman Kessay Jr.; and 2) the authorization for the Cedar Creek Tower agreement sought was in fact an attempt to disguise and secure a master lease agreement with Cellular One on behalf of the Tribe, presumably to reap the benefits for personal and political gain; and

WHEREAS, Cellular One's general counsel Timothy Shaffery was immediately contacted by the Attorney General, but after discussing this matter with Cellular One management, he insisted that a valid

contract was executed and that if the Tribe disagreed with the terms, the Tribe would have to take Cellular One to court; and

WHEREAS, on this day, for all of the reasons stated hereto, Councilwoman Theresa Larzelere of District IV comes now before the Tribal Council to discuss appropriate disciplinary action for Councilman Clinton Kessay Jr., and to determine whether the governing body should consider forwarding this matter to the Tribal Prosecutor for an independent review; and

WHEREAS, after much deliberation, the Tribal Council finds it in the best interest of the Tribe to direct Attorney General Jim Palmer to hire an Independent Special Prosecutor to determine whether the actions by Councilman Clinton Kessay Jr., were criminal, specifically Tribal Criminal Code Section 2.87, Fraudulent Schemes and Practices, or any other sections that may be applicable.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs Attorney General Palmer to hire an independent Prosecutor for the purpose of investigating and as appropriate, indict and prosecute, Councilman Clinton Kessay Jr. and other individuals involved in the deception for violating Section 2.87 of the Tribal Criminal Code Section 2.87, Fraudulent Schemes and Practices, or any other sections that may apply.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby suspends Councilman Clinton Kessay Jr., for 90 days for knowingly and intentionally misrepresenting material facts to members of the governing body and the Attorney General's office in his attempt to secure a deal with Cellular One.

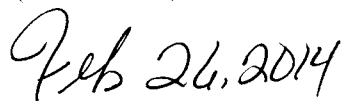
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.


BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, or any material facts concerning the issues presented are later found to be false, this Resolution shall be declared null and void and have no legal effect.

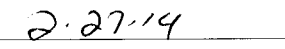
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign.

The foregoing resolution was on **JANUARY 21, 2014** duly adopted by a vote of **SIX** for, **ZERO** against, and **ZERO** abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (k), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


Ronnie Lupe, Chairman


Date


Mariddie J. Craig, Secretary


Date